



Reprinted
February 2, 1999

HOUSE BILL No. 1487

DIGEST OF HB 1487 (Updated February 1, 1999 4:46 pm - DI 96)

Citations Affected: IC 22-1; IC 22-9.

Synopsis: Wage discrimination. Provides that an employer may not discriminate against an employee on the basis of sex, race, or national origin by paying wages at a rate less than to other employees of another sex, race, or national origin. Requires the department of labor to adopt rules to implement the chapter, including specifying the criteria for determining whether a job is dominated by employees of one sex, a particular race, or a particular national origin. Requires an employer to keep records of wages paid to employees and to document wages paid to employees and support the method, system, calculations, and bases used to establish, adjust, and determine the wage rates paid to its employees. Requires an employer to provide to the employee upon
(Continued next page)

Effective: Upon passage.

Lawson L, Liggett, Stilwell

January 19, 1999, read first time and referred to Committee on Labor and Employment.
January 27, 1999, reported — Do Pass.
February 1, 1999, read second time, amended, ordered engrossed.

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commencement of employment and at least annually thereafter, a statement of the job title, wage rate, and how the wage is calculated. Allows an individual claiming discrimination to file a complaint with the civil rights commission. Allows an individual to file a civil action for violation of the requirement to be furnished an annual statement of wages. Allows the department of labor to file a civil action against an employer for a violation of the record keeping requirements. Allow a court to award reasonable compensatory and punitive damages if appropriate, any penalties awarded by the department of labor, reasonable attorney's fees, expert witness fees if appropriate, and costs of the action. Provides that if the court makes a ruling that if no substantial violation of underlying law has been found, and the violation is the initial violation of this chapter, the court may not award any damages or any penalties to the prevailing party.

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1487

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-1-1-8 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE UPON PASSAGE]: Sec. 8. The commissioner of labor
- 3 may do the following:
- 4 (1) Make or cause to be made all necessary inspections to see that
- 5 all of the laws and rules enacted or adopted for that purpose and
- 6 that the department is required to enforce are promptly and
- 7 effectively administered and executed.
- 8 (2) Collect, collate, and publish statistical and other information
- 9 relating to working conditions in this state and to the enforcement
- 10 of this chapter **and IC 22-9-7** and such rules as may be necessary
- 11 to the advancement of the purposes of this chapter, but no
- 12 publicity of any information involving the name or identity of any
- 13 employer, employee, or other person, firm, limited liability
- 14 company, or corporation shall be given. It shall be unlawful for
- 15 the commissioner or any person to divulge, or to make known in

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any way not provided by law, to any person the operation, style of work, or apparatus of any employer, or the amount or sources of income, profits, losses, expenditures, or any part thereof obtained by him in the discharge of his official duties.

(3) Except as otherwise provided by law, employ, promote, and remove clerks, inspectors, and other employees as needed or as the service of the department of labor may require, and with the approval of the governor, within the appropriation therefor, fix their compensation and to assign to them their duties. Employees of the department are covered by IC 4-15-2.

(4) Promote the voluntary arbitration, mediation, and conciliation of disputes between employers and employees, for the purpose of avoiding strikes, lockouts, boycotts, blacklists, discrimination, and legal proceedings in matters of employment. The commissioner may appoint temporary boards of arbitration, provide for the payment of the necessary expenses of the boards, order reasonable compensation paid to each member engaged in arbitration, prescribe and adopt rules of procedure for arbitration boards, conduct investigations and hearings, publish reports and advertisements, and do all other things convenient and necessary to accomplish the purpose of this chapter. The commissioner may designate an employee of the department to act as chief mediator and may detail other employees, from time to time, to act as his assistants for the purpose of executing this chapter. Any employee of the department who may act on a temporary board shall serve without extra compensation.

SECTION 2. IC 22-9-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE] :

Chapter 7. Wage Discrimination

Sec. 1. The general assembly finds that despite federal and state laws banning discrimination in employment and pay in public and private employment, wage differentials persist between women and men and between minorities and nonminorities in the same jobs and in equivalent jobs.

Sec. 2. As used in this chapter, "department" refers to the department of labor.

Sec. 3. As used in this chapter, "employee" means an individual employed by an employer. The term does not include an employee employed by an employer for less than three (3) months.

Sec. 4. As used in this chapter, "employer" means a person employing six (6) or more persons within the state. The term does



not include:

- (1) a nonprofit corporation or association organized exclusively for fraternal or religious purposes;
- (2) a school, educational, or charitable religious institution owned or conducted by or affiliated with a church or religious institution; or
- (3) an exclusively social club, corporation, or association that is not organized for profit.

Sec. 5. As used in this chapter, "equivalent jobs" means jobs or occupations that are equal within the meaning of the federal Equal Pay Act of 1963 (29 U.S.C. 206 (d)) or jobs or occupations that are dissimilar but whose requirements are equivalent, when viewed as a composite of skills, effort, responsibility, and working conditions.

Sec. 6. As used in this chapter, "market rates" means the rates that employers within a prescribed geographic area actually pay or are reported to pay for specific jobs, as determined by formal or informal surveys, wage studies, or other means.

Sec. 7. As used in this chapter, "person" means one (1) or more individuals, partnerships, associations, organizations, limited liability companies, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, other organized groups of persons, and the state and all political subdivisions and agencies of the state.

Sec. 8. As used in this chapter, "wages" and "wage rates" mean compensation in any form that an employer provides to an employee in return for work performed or services rendered, including base pay, bonuses, commission, awards, tips, or nonmonetary compensation if provided instead of or in addition to monetary compensation and that has economic value to an employee.

Sec. 9. An employer may not discriminate among employees on the basis of sex, race, or national origin by:

- (1) paying wages to employees at a rate less than the rate paid to employees of the opposite sex, a different race, or dissimilar national origin for work in equivalent jobs; or
- (2) paying wages to employees in a job that is dominated by employees of one (1) sex, a particular race, or national origin at a rate less than the rate at which the employer pays to employees in an equivalent job that is dominated by employees of the opposite sex, a different race, or dissimilar national origin.

Sec. 10. Notwithstanding section 9 of this chapter, an employer



may pay different wage rates to employees when the payments are made pursuant to:

- (1) a seniority or merit system;
- (2) a system that measures earnings by quantity or quality of production; or
- (3) a differential based on any other factor other than sex, race, or national origin.

Sec. 11. An employer who is paying a wage rate differential in violation of section 10 of this chapter may not reduce the wage rate of an employee to comply with section 10 of this chapter.

Sec. 12. A labor organization, or its agents, representing employees of an employer having employees subject to this chapter may not cause or attempt to cause an employer to discriminate against an employee in violation of section 9 of this chapter.

Sec. 13. The department shall adopt rules under IC 4-22-2 to implement this chapter. The rules must include specifications of the criteria for determining whether a job is dominated by employees of one (1) sex, a particular race, or a particular national origin. The criteria must include:

- (1) whether the job has been formally classified or traditionally considered to be male, female, white, or minority;
- (2) whether there is a history of discrimination against women or individuals of a particular race regarding wages, assignment, or access to jobs, or other terms or conditions of employment; and
- (3) the demographic composition of the workforce in equivalent jobs.

The rules shall provide a time frame for retention of records by the employer. The rules may not include a list of jobs. The rules must provide for protection of the confidentiality of employees and must require that reports not include the names of employees or other identifying information.

Sec. 14. (a) Upon commencement of an individual's employment and at least annually thereafter, an employer shall provide to each employee a written statement informing the employee of the job title, wage rate, and how the wage is calculated.

(b) An employer shall make and preserve records that document the wages paid to employees and support the method, system, calculations, and bases used to establish, adjust, and determine the wage rates paid to its employees.

(c) An employer shall preserve the records for the periods of



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1 time established under section 13 of this chapter and shall make
2 reports from the records as required by rule of the department.

3 Sec. 15. The department may use the information and data from
4 reports submitted under section 14(c) of this chapter for statistical
5 and research purposes, subject to the provisions of IC 22-1-1-8 (2).

6 Sec. 16. It is an unfair employment practice for an employer:

7 (1) to take adverse action or otherwise discriminate against an
8 individual because:

9 (A) the individual has opposed an act or practice made
10 unlawful by this chapter;

11 (B) has sought to enforce rights protected under this
12 chapter; or

13 (C) has testified, assisted, or participated in an
14 investigation, hearing, or other proceeding to enforce this
15 chapter; or

16 (2) to discharge, discriminate against, coerce, intimidate,
17 threaten, or interfere with an employee or person because:

18 (A) the employee inquired about, disclosed, compared, or
19 discussed the employee's wages or the wages of another
20 employee; or

21 (B) the employee exercised, enjoyed, aided, or encouraged
22 another person to exercise or enjoy any right granted or
23 protected by this chapter.

24 Sec. 17. An aggrieved individual may file a complaint with the
25 civil rights commission under IC 22-9-1-6 if the individual alleges
26 a discriminatory practice under section 9, 11, 12, or 16 of this
27 chapter. The civil rights commission shall determine whether the
28 complaint requires action to be taken under IC 22-9-1-6.

29 Sec. 18. (a) An aggrieved individual alleging a violation of
30 section 14(a) and 14(b) of this chapter may file a civil action in a
31 circuit or superior court having jurisdiction in the county where
32 the violation is alleged to have occurred.

33 (b) The department may file a civil action in a circuit or
34 superior court having jurisdiction in the county where a violation
35 of section 14(c) of this chapter is alleged to have occurred.

36 (c) In an action under this chapter where the court finds against
37 an employer, the employee or the department shall be awarded
38 reasonable compensatory and punitive damages if appropriate, any
39 penalties of any type under section 13 of this chapter, reasonable
40 attorney's fees, expert witness fees if appropriate, and costs of the
41 action.

42 (d) If the court finds against the employer for a violation of



1 section 14(a), (b), or (c) of this chapter, but within its ruling makes
2 a finding that:

3 (1) no substantive violation of underlying law has been found;
4 and

5 (2) the violation is the initial violation of section 14 of this
6 chapter by the employer;

7 the court may not award any damages or any penalties adopted
8 under section 13 of this chapter to the prevailing party.

9 (e) A civil action under this chapter must be filed not later than
10 two (2) years after the date of the last event constituting the alleged
11 violation for which the action is brought.

12 (f) The procedures and requirements for an appeal under
13 IC 22-9-8 apply to this chapter.

14 SECTION 3. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1487, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LIGGETT, Chair

Committee Vote: yeas 7, nays 6.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1487 be amended to read as follows:

Page 5, line 37, after "awarded" insert "**reasonable compensatory and punitive damages if appropriate, any penalties of any type under section 13 of this chapter,**".

(Reference is to HB 1487 as printed January 28, 1999.)

LAWSON L

HOUSE MOTION

Mr. Speaker: I move that House Bill 1487 be amended to read as follows:

Page 5, between lines 39 and 40, begin a new paragraph and insert:

"(d) If the court finds against the employer for a violation of section 14(a), (b), or (c) of this chapter, but within its ruling makes a finding that:

**(1) no substantive violation of underlying law has been found;
and**

(2) the violation is the initial violation of section 14 of this chapter by the employer;

the court may not award any damages or any penalties adopted under section 13 of this chapter to the prevailing party."

Page 5, line 40, delete "(d)" and insert "(e)".

Page 6, line 1, delete "(e)" and insert "(f)".

(Reference is to HB 1487 as printed January 28, 1999.)

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